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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,084	04/13/2004	Jackie Y. Ying	M0925.70140US01	3163

7590 02/02/2009
Timothy J. Oyer, Ph.D.
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Boston, MA 02210

EXAMINER

HENDRICKSON, STUART L

ART UNIT	PAPER NUMBER
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1793

MAIL DATE	DELIVERY MODE
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02/02/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/823,084	Applicant(s) YING ET AL.	
	Examiner Stuart Hendrickson	Art Unit 1793	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12/9/08.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-59 is/are pending in the application.
- 4a) Of the above claim(s) 41-59 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsuchitani et al. 6194344.

The reference teaches, especially in col. 18-20, controlling the crystal structure of a carbon material of the claimed pore distribution. The crystallinity may be optimized, hence making essentially pure crystalline material is an obvious expedient; In re Boesch 205 USPQ 215. While not teaching conductivity or other properties, no differences are seen due to the similarity of the structure.

Claims 1-40 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Bell et al. 6297293.

The reference teaches, in columns 5-6 in particular, a carbon material of uniform pore size. While not teaching the crystallinity or other parameters, it teaches a similar synthesis (furfural alcohol polymer and a surfactant) and thus is expected to possess the structural features. No difference is seen in the product.

Claims 1-15, 19-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ryoo 6585948.

Ryoo teaches in col. 5 material of uniform pore size 3 nm. The crystallinity may be optimized, hence making essentially pure crystalline material is an obvious expedient; In re Boesch 205 USPQ 215. While not teaching conductivity or other properties, no differences are seen due to the similarity of the structure.

Claims 1-14, 19-40 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Bilenko 6936234.

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The reference teaches in col. 2 a crystalline microporous material. While not teaching conductivity or other properties, no differences are seen due to the similarity of the structure.

Applicant's arguments filed 12/9/08 have been fully considered but they are not persuasive. Most of the arguments are boilerplate to the effect of 'the reference does not use the same words'. However this overlooks the fact that the teachings are similar enough to shift the burden to applicant to show a difference. For example, the figures of Bell clearly show the pores in the claimed range. Tsuchitani col. 20, discussed in the rejection, clearly teaches the claimed pore distribution and discusses fig 3 which clearly shows it. The same goes for the other references. If applicant provides the exact date of conception of the invention, then the examiner will in the future reject Bilenko using the exact precise statute (a, b or e). Is Bilenko commonly owned, or was it at the time of the invention? A copy of the claims should not be submitted unless an amendment thereto is made.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication should be directed to examiner Hendrickson at telephone number (571) 272-1351.

/Stuart Hendrickson/
examiner Art Unit 1793